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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,498	08/19/2003	John R. Haaga	HGEE 3 13394-3	5526

7590 06/27/2005

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EXAMINER	
MUROMOTO JR, ROBERT H	
ART UNIT	**PAPER NUMBER**
3765	

DATE MAILED: 06/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/643,498	HAAGA, JOHN R.	
	Examiner	Art Unit	
	Robert H. Muromoto, Jr.	3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 August 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *49-89* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *49-89* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *1/24/2005;3/8/04*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 49-89 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 49-84 of copending Application No. 10/287,237. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant claims 49-54, and 59-63 are virtually identical to the parent application's claims 49-52, 55, 56, 59, and 60, respectively.

Instant claim 49 differs from patent claim 49 in that it recites "about 10 microns and greater" rather than "at least about 10 microns".

Instant claims 55-58 are not specifically taught by the patent but with respect to product variables, if the variables are not shown criticality or unexpected results then they cannot be considered patentable. One of ordinary skill in the art could through

routine experimentation determine the optimum filtration particle size and number of filter layers for a given application.

Instant claim 64 is in some aspects broader than the patent claim 71 to which it is most clearly related. It has been held that the more specific (here the patent claim 71) claim anticipates the broader claim (the instant claim). The instant claim is broader in that its particle filtration range is larger and that the limitation "not protecting the eyes..." is removed and presented later in claim 65 and that the limitation including "non-filter" material is removed and presented later in claim 66.

Instant claims 67-69 and claims 70-72, respectively are not specifically taught by the patent but with respect to product variables, if the variables are not shown criticality or unexpected results then they cannot be considered patentable. One of ordinary skill in the art could through routine experimentation determine the optimum filtration particle size and number of filter layers for a given application.

Instant claims 73-78 are verbatim to claims 77, 78, 78, 79, 80, and 80, respectively.

Instant claim 79 is virtually identical to patent claim 61 except that it recites "about 10 microns and greater" rather than "at least about 10 microns", these ranges are functionally equivalent as they overlap and the broadness of about and at least make them virtually identical to each other.

Instant claim 80 is verbatim to patent claim 62.

Instant claims 81-83 are not specifically taught by the patent but with respect to product variables, if the variables are not shown criticality or unexpected results then

they cannot be considered patentable. One of ordinary skill in the art could through routine experimentation determine the optimum filtration particle size and number of filter layers for a given application.

Instant claims 84-87 are presented verbatim to patent claims 65-70.

Instant claims 88 and 89 recite a filter material that "blends" with the non-filter material in "color, design, or combinations, thereof." The examiner's position is that the broadness of this limitation would be within the teaching of the patent. The patent's combination of filter and non-filter material "blends" in "design" as they are already stated to be included in combination in the product. They therefore "blend" in "design". Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to modify the patent to include a non-filter material that "blends" in with the filter material in its "design" as recited in the instant invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert H. Muromoto, Jr. whose telephone number is 571-272-4991. The examiner can normally be reached on 8-530, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 703-305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bhm
June 21, 2005

JOHN G. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700